



South Carolina Commission on Higher Education

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Dr. Garrison Walters, Executive Director

MEMORANDUM

TO: Presidents of Public Higher Education Institutions
Chief Finance or Business Officers of Public Higher Education Institutions

FROM: Garrison Walters, Executive Director

DATE: June 12, 2009

RE: American Recovery and Reinvestment Act of 2009 and
The State Fiscal Stabilization Funds (SFSF)

The purpose of this correspondence is to provide you with resource information that may be helpful to you as you prepare to receive and expend the federal State Fiscal Stabilization Funds (SFSF) that are forthcoming. Below are links to information and guidance from the US Department of Education about the use of and accountability for these funds. Copies of provisions included in the FY 2009-10 State Appropriations Act relevant to the SFSF and other American Recovery and Reinvestment Act (ARRA) funds are also included.

In keeping with the federal legislation and state provisions that were passed in the FY 2009-10 budget, the expectations are for complete transparency and full accountability in regard to the receipt and expenditure any ARRA funds received. As you are likely aware, the state will be required to report separately on the use of these funds, and consequently, you should be prepared to account separately for the SFSF and other ARRA funds.

We expect that you will receive additional details from the Office of State Budget or the State Treasurer and Comptroller General who have been charged with oversight of funds associated with the ARRA. The Commission does not have a direct role in this oversight process. However, we would be happy to assist as might be appropriate and desired in the coordination of these efforts for higher education if doing so would be helpful. Should you have questions relating to this document, please contact Julie Carullo (jcarullo@che.sc.gov / 803.737.2292).

RESOURCES AND INFORMATION

State Application:

The following link, <http://www.scgovernor.com/news/releases/6-8-09.htm>, is to the application for the State Fiscal Stabilization Funds (SFSF) as submitted by the Governor's office on Monday, January 8.

You'll note in the application that SC's higher education institutions are expected to receive based on the initial application a total of \$208,388,317 over the next two years from the Education SFSF funds (see pages 8-9). Of the anticipated funds to be available for higher education, \$99,922,339 has been appropriated for higher education institutions for FY 2009-10. The balance of the funds would be expected to be appropriated for use in FY 2010-11. The University Center of Greenville was appropriated \$364,440 for FY 2009-10 from the Government Services portion of the SFSF. Funds provided from the SFSF are available for obligation through September 30, 2011. A copy of the state appropriations from the SFSF is provided below. As part of the application, the state will seek a waiver of the maintenance of effort requirement, and in doing so, has provided assurance that the State has provided for elementary, secondary, and public higher education for the fiscal year under consideration, at an equal or greater percentage of the total revenues available to the State than the percentage provided for that purpose in the preceding fiscal year. Information regarding the maintenance of effort is found on page 23 of the application and additional information is available below in links to the federal SFSF Guidance.

On page 11 of the State's application, you'll find Part 6, a section regarding required reporting and accountability. Please note in this section the annual reporting requirements outlined for each year of the program. The state will be required to submit a report to the US Secretary of Education that describes:

- The uses of funds within the State;
- How the State distributed the funds it received;
- The number of jobs that the Governor estimates were saved or created with the funds;
- Tax increases that the Governor estimates were averted because of the funds;
- The State's progress in reducing inequities in the distribution of highly qualified teachers, implementing a State longitudinal data system, and developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;
- The tuition and fee increases for in-State students imposed by public Institutions of Higher Education (IHEs) and a description of any actions taken by the State to limit the increases;
- The extent to which public IHEs maintained, increased, or decreased enrollment of in-State students, including those students eligible for Pell Grants or other need-based financial aid; and
- A description of each modernization, renovation, and repair project funded, including the amounts awarded and project costs. (ARRA Division A, Section 14008)

US Department of Education Information and Guidance

The general link for the information about the SFSF funds on the US Department of Education's website is <http://www.ed.gov/programs/statestabilization/applicant.html>. From this link, you can find guidance, legislation, and other useful information. Some of the useful links and excerpts from these as appropriate are copied below. **Click on the yellow highlighted text to link directly to the referenced documents.** Please be advised that the information is subject to change and you are encouraged to check the general link for any updates or new information.

ARRA Legislation:

Title XIV: State Fiscal Stabilization Fund of the American Recovery and Reinvestment Act of 2009

[click here \(PDF \(125K\)\)](#)

Excerpt from Legislation on the Use of the SFSF funds by Higher Education –

SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.

(a) In General. A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students, or for modernization, renovation, or repair of institution of higher education facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. An institution of higher education may not use funds received under this title to increase its endowment.

(c) Additional Prohibition. No funds awarded under this title may be used for—

- (1) the maintenance of systems, equipment, or facilities;
- (2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or
- (3) modernization, renovation, or repair of facilities—
 - (A) used for sectarian instruction or religious worship; or
 - (B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

SFSF Application Instructions:

- Cover Letter and Application
 - [Notice announcing application deadline: July 1, 2009](#)
 - Letter [PDF](#) (56K) (Apr 1, 2009)
 - Application [PDF](#) (10.7M) (Apr 1, 2009)
 - Clarifying Instructions Regarding Use of FY 2009 Prior-Enacted Levels of State Support [MS Word](#) (24K) (April 6, 2009)

(See Above for SC's Completed Application)

SFSF Guidance Documents:

USDE Fact Sheet – click on title for link - [State Fiscal Stabilization Fund Fact Sheet](#) (March 6, 2009)

***Primary Guidance Document – Guidance** [PDF](#) (412K) (April 1, 2009)

- Guidance Modifications (Apr 7, 2009) [PDF](#) (108K)
- Guidance Modifications (May 11, 2009) [PDF](#) (108K)
- Guidance on the Maintenance-of-Effort Requirements in the State Fiscal Stabilization Fund Program (May 1, 2009) [PDF](#)

The **April 1 Guidance Document** is the primary guidance document from the US Department of Education regarding the SFSF funds. You are encouraged to refer to the Guidance document and any updates for complete information and other details. Excerpted below is information of interest for higher education from the April 1 document. The page references are consistent with the “pdf” version of the posting. Refer to the full document for complete guidance on these and other sections of interest.

Pages 1-3 for General Information regarding the SFSF. On page 2, item I-4 provides a description of the overarching principles that guide the distribution of the ARRA funds administered by US Department of Education. The principles include: 1) Spend funds quickly to save and create jobs; 2) Improve student achievement through school improvement and reform; 3) Ensure transparency and accountability and report publicly on the use of funds; and 4) Invest one-time ARRA funds thoughtfully to minimize the “funding cliff.”

Pages 26-30, Section E, for information regarding the Use of Funds for institutions of Higher Education (IHEs).

Item III-E-1 outlines general use and purposes of the SFSF by IHEs (p.26):

Section 14004(a) of the ARRA authorizes a public IHE to use Education Stabilization funds for –

- *Education and general expenditures, in such a way as to mitigate the need to raise tuition and fees for in-State residents; or*
- *Modernization, renovation, or repair of IHE facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green-building rating system.*

Item III-E-2 outlines prohibitions on an IHE's use of the funds from the Education SFSF (p.26) including:

Sections 14004(b) and (c) of the ARRA prohibit an IHE from using Education Stabilization funds for the following purposes or activities –

- *To increase its endowment;*
- *Maintenance of systems, equipment, or facilities;*
- *Modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or*
- *Modernization, renovation, or repair of facilities –
(a) used for sectarian instruction or religious worship; or
(b) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.*

In addition, there are other prohibitions in section 1604 of the ARRA – for example, prohibitions against using funds for an aquarium, zoo, golf course, or swimming pool – that apply to the use of Stabilization funds by any entity.

Item III-E-3 provides additional information on the types of E&G expenditures an IHE may support with Education SFSF funds (p.27). The Section states:

Subject to all applicable ARRA statutory requirements and prohibitions, as well as any restrictions that a Governor places on an IHE's use of Education Stabilization funds to help mitigate the need for increases in tuition and fees paid by in-State students, an IHE may use the funds to support a broad array of activities. For example, an IHE might use Education Stabilization funds to provide:

- *Support for salaries related to classroom and laboratory instruction and instructional technology;*
- *Academic support for libraries, laboratories, and other academic facilities;*
- *Institutional support for activities related to personnel, payroll, security, environmental health and safety, and administrative offices;*
- *Student services that promote a student's emotional and physical well-being outside the context of the formal instructional program; and*
- *Student financial aid, such as IHE-sponsored grants and scholarships.*

Items III-E-9 and III-E-10 and III-E-11 may also be of interest and are excerpted in what follows.

III-E-9. Does a Governor have the authority to award Education Stabilization funds only to those public IHEs that agree to limit increases in tuition and fees paid by in-State students?

Yes. Since a Governor has the discretion to decide how Education Stabilization funds are allocated to public IHEs, the Governor may impose specific eligibility requirements on these institutions, so as to ensure the efficient and effective allocation of funds to meet the intent of the statute.

One of the purposes of the State Fiscal Stabilization Fund program is to help mitigate the need for increases in tuition and fees that in-State students pay to attend public IHEs. Thus, consistent with this statutory purpose, a Governor may refuse to award Education Stabilization funds to public IHEs that do not minimize tuition and fee increases for in-State students.

III-E-10. Does a Governor have the authority to restrict an IHE's use of Education Stabilization funds?

Yes. A Governor may restrict an IHE's use of Education Stabilization funds to expenditures that would help mitigate the need for increases in tuition and fees paid by in-State students.

III-E-11. How long does an IHE have to obligate Education Stabilization funds?

An IHE may obligate Education Stabilization funds through September 30, 2011. A chart indicating when an obligation occurs for various types of activities is provided in the Education Department General Administrative Regulations (EDGAR) at 34 C.F.R. 76.707.

Pages 38 – 40 include information on the maintenance of efforts requirement. See Items VI-A-2 and VI-A-7 for information relating to required support and criteria for waiver eligibility.

Pages 42-45 include information about transparency and accountability. This section outlines reporting that is required and provides information about drawing down funds and other accounting provisions in accepting the funds. On page 42 it is stated:

All ARRA funds must be spent with an unprecedented level of transparency and accountability. Accordingly, recipients of ARRA funds must maintain accurate, complete, and reliable documentation of all ARRA expenditures. The law contains very stringent reporting requirements and requires that detailed information on the uses of funds be available publicly on www.recovery.gov.

States have important oversight responsibilities and must monitor grant and subgrant supported activities to ensure compliance with all applicable Federal requirements. If a grantee or subgrantee fails to comply with requirements governing the funds, the Department may, consistent with applicable administrative procedures, take one or more enforcement actions, including withholding or suspending, in whole or part, funds awarded under the program, or recovering misspent funds following an audit.

SOUTH CAROLINA ARRA AND SFSF PROVISIONS AS ENACTED IN THE FY 2009-10 APPROPRIATIONS ACT

Excerpted below are provisions relating to the ARRA funds as passed in the State's FY 2009-10 Appropriations Act. The full Appropriations Act is available online from the General Assembly's website at http://www.scstatehouse.gov/sess118_2009-2010/appropriations2009/ta09ndx.htm

Part III – Provisions for the Appropriations of the SFSF Funds:

*****PART III***

FISCAL YEAR 2009-10 STATE STABILIZATION FUND

SECTION 1. Pursuant to Title XVI of the American Recovery and Reinvestment Act of 2009 (ARRA), the Governor has certified that (1) the State will request and use funds provided by the ARRA, and (2) the funds will be used to create jobs and promote economic growth. As a result of the Governor's action, the General Assembly recognizes \$694,060,272 of federal funds pursuant to the State Fiscal Stabilization Fund established by Title XIV of the ARRA and that these funds are authorized for appropriation pursuant to the provisions of this Part. In order to fund the appropriations provided by this Part, the Governor and the State Superintendent of Education shall take all action necessary and required by the ARRA and the U.S. Secretary of Education in order to secure the receipt of the funds recognized and authorized for appropriation pursuant to this section. The action required by this Part includes but is not limited to: (1) within five days of the effective date of this Part, the Governor shall submit an application to the United State's Secretary of Education to obtain phase one State Fiscal Stabilization Funds, and (2) within thirty days of phase two State Fiscal Stabilization Funds becoming available or thirty days following the effective date of this act, whichever is later, the Governor shall submit an application to the United State's Secretary of Education to obtain phase two State Fiscal Stabilization Funds. The State Superintendent of Education shall take all action necessary and provide any information needed to assist the Governor in fulfilling his obligation to apply for State Fiscal Stabilization funds pursuant to this Section.

SECTION 2. (A) Upon the receipt of the funds in Section 1, the following sums must immediately be transferred to the following agencies to be expended for the specified purposes to supplement appropriations made for the expenses of state government in the annual general appropriation act for Fiscal Year 2009-10 and the Office of State Budget is directed to increase agency federal fund authorization for funds from the State Budget Stabilization Fund allocated herein:

| | | |
|---|----|-------------|
| (1) H63 - Department of Education EFA Base Student Cost | \$ | 184,922,339 |
| (2) H09 - The Citadel | \$ | 2,161,240 |
| (3) H12 - Clemson University | \$ | 14,691,917 |
| (4) H15 - University of Charleston | \$ | 4,692,447 |
| (5) H17 - Coastal Carolina University | \$ | 2,270,097 |
| (6) H18 - Francis Marion University | \$ | 2,588,272 |
| (7) H21 - Lander University | \$ | 1,440,348 |
| (8) H24 - South Carolina State University | \$ | 3,253,587 |
| (9) H27 - University of South Carolina - Columbia | \$ | 23,945,887 |
| (10) H29 - University of South Carolina - Aiken | \$ | 1,469,806 |
| (11) H34 - University of South Carolina - Upstate | \$ | 1,959,567 |
| (12) H36 - University of South Carolina - Beaufort | \$ | 481,777 |
| (13) H37 - University of South Carolina - Lancaster | \$ | 356,295 |
| (14) H38 - University of South Carolina - Salkehatchie | \$ | 310,271 |
| (15) H39 - University of South Carolina - Sumter | \$ | 575,463 |
| (16) H40 - University of South Carolina - Union | \$ | 138,095 |
| (17) H47 - Winthrop University | \$ | 3,092,270 |
| (18) H51 - Medical University of South Carolina | \$ | 12,671,177 |
| (19) H53 - Consortium of Community Teaching Hospitals | \$ | 2,012,569 |
| (20) H59 - Board for Technical & Comprehensive Education | \$ | 21,811,254 |
| (21) N04 - Department of Corrections | \$ | 22,000,000 |
| (22) N12 - Department of Juvenile Justice | \$ | 5,000,000 |
| (23) N20 - Law Enforcement Training Council Criminal Justice Academy | \$ | 120,000 |
| (24) N08 - Department of Probation, Parole, and Pardon Services | \$ | 2,000,000 |
| (25) K05 - Department of Public Safety | \$ | 15,000,000 |
| (26) H87 - State Library State Aid for County Libraries | \$ | 1,685,045 |
| (27) H91 - Arts Commission Statewide Education, Arts, and Cultural Grants | \$ | 500,000 |
| (28) H79 - Department of Archives and History | \$ | 500,000 |
| (29) H63 - Department of Education Governor's School for the Arts and the Humanities | \$ | 500,000 |
| (30) H63 - Department of Education Governor's School for Science and Mathematics | \$ | 500,000 |
| (31) H71 - Wil Lou Gray Opportunity School | \$ | 500,000 |
| (32) H75 - School for the Deaf and the Blind | \$ | 500,000 |
| (33) D10 - State Law Enforcement Division | \$ | 2,000,000 |
| (34) B04 - Judicial Department | \$ | 4,000,000 |
| (35) H67 - Educational Television Commission Satellite Lease | \$ | 540,000 |
| (36) P20 - Clemson University - PSA | \$ | 2,500,000 |
| (37) P21 - South Carolina State University - PSA | \$ | 500,000 |
| (38) P32 - Department of Commerce Regional Economic Development Organizations | \$ | 3,450,000 |
| (39) H03 - Commission on Higher Education University Center of Greenville | \$ | 364,440 |
| (40) P12 - Forestry Commission | \$ | 500,000 |
| (41) P16 - Department of Agriculture | \$ | 250,000 |
| (42) P24 - Department of Natural Resources | \$ | 250,000 |
| Total Funds Authorized for Fiscal Year 2009-10 | \$ | 348,004,163 |

(B) Of the funds transferred to the Department of Commerce for Regional Economic Development Organizations in this section, the department shall divide \$3,150,000 equally to the following seven economic development organizations:

- (1) Central SC Economic Development Alliance;
- (2) Charleston Regional Development Alliance;
- (3) Economic Development Partnership;
- (4) North Eastern Strategic Alliance (NESA);
- (5) Southern Carolina Alliance;
- (6) Upstate Alliance; and
- (7) LowCountry Alliance.

The funds dispersed to each organization must be matched with an equal amount of private funds. The organization receiving state funds must certify that the private funds are new dollars specifically designated for the purpose of matching state funds and have not been previously allocated or designated for economic development.

The remaining \$300,000 shall be provided to Chester County, Lancaster County, Union County, and York County provided they meet the requirements established above.

Upon receipt of the request for the funds and certification of the matching funds, the Department of Commerce shall disperse the funds to the requesting organization. Any funds remaining in the department's account for Regional Economic Development Organizations at the end of Fiscal Year 2009-2010 shall be transferred to the General Fund.

Funds recipients shall provide an annual report by November 1, to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of Commerce on the expenditure of the funds and on the outcome measures.

(C) Of the funds transferred to the State Law Enforcement Division in this section, the division must utilize the funds to maximize statutorily-mandated law enforcement services.

(D) Of the funds transferred to the Arts Commission in this section, the commission must utilize \$100,000 of the funds for Spoleto and \$10,435 of the funds for the McClellanville Arts Council.

(E) Of the funds transferred to the Department of Natural Resources in this section, the department must utilize \$100,000 of the funds for the Southeastern Wildlife Exposition.

(F) For purposes of the expenditures authorized by this section, the funds must be used in a manner consistent with the provisions of the State Fiscal Stabilization Fund established by the American Recovery and Reinvestment Act of 2009 and the provisions of this act.

(G) The remaining portion of the State Fiscal Stabilization funds received pursuant to Section 1 not necessary to meet the appropriations of this Part, must be deposited in a separate and distinct account in the State Treasurer's Office and may only be disbursed pursuant to an appropriation contained in a subsequent act of the General Assembly.

(H) The General Assembly recognizes that the receipt of the funds appropriated in this Part is designed to address a precipitous drop in revenue due to the pending economic crisis and the use of this money to fund recurring expenses is a means to address this shortfall in recurring funds until the economy improves. The General Assembly further recognizes that these funds are temporary in nature and may not be sufficient to address a shortfall in recurring revenue if the current economic crisis extends beyond the period currently contemplated. As a result, the General Assembly strongly encourages state agencies and institutions and school districts receiving these funds to limit the reliance on these funds and make contingency plans that include savings necessary to meet future recurring obligations.

SECTION 3. If any section, subsection, part, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this severability, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This part takes effect upon approval by the Governor.

Text printed in *italic*, boldface indicates sections vetoed by the Governor on May 19, 2009.

****Indicates those vetoes overridden by the General Assembly on May 20 and 21, 2009.**

END OF PART III

FY 2009-10, Part 1B Provisos relating to the ARRA

6.26. (CHE: Religious Activities) For Fiscal Year 2009-2010, state supported higher education institutions receiving Federal Stimulus Stabilization funds must continue to support, operate and maintain existing religious programs, instruction, and facilities used for religious activities.

89.116. (GP: Transparency) State agencies must publish on their homepage a listing of all programs funded during the current fiscal year with funds from the American Recovery and Reinvestment Act of 2009 to include program name, location, starting date, and funding level. This listing must be updated quarterly to allow the public to easily identify how these funds are being used.

89.118. (GP: ARRA Oversight) In order to provide transparency and accountability, and to maintain the separation of duties as provided by our Constitution, the State Treasurer and Comptroller General shall organize and co-chair a committee for monitoring funds associated with the American Recovery and Reinvestment Act of 2009. This committee shall collect information from state agencies and institutions regarding funds received from the American Recovery and Reinvestment Act of 2009. Information collected shall include, but not be limited to, the name of state agency or institution, the program designation, the purpose for which the funds were received and expended, and the amount of funds received and expended. The information shall also include data and documentation on job creation resulting from receipt of the federal stimulus funds and any other data or explanation as required by the American Recovery and Reinvestment Act of 2009. The co-chairs may also require local government entities to provide any information deemed relevant to provide disclosure of the American Recovery and Reinvestment Act of 2009 funds to the public, including audit reports.

90.15. (SR: State Budget Stabilization Fund) It is the intent of the General Assembly to accept all available funds from the State Budget Stabilization Fund contained within the American Recovery and Reinvestment Act of 2009 and to authorize expenditure of such funds as delineated in this act.

90.16. (SR: ARRA Fund Authorization) It is the intent of the General Assembly to accept all available funds from the State Budget Stabilization Fund contained within the American Recovery and Reinvestment Act of 2009. The Office of State Budget is directed to increase agency federal fund authorizations for funds from the State Budget Stabilization Fund allocated by the General Assembly.

1.79. (SDE: Prohibit Use of ARRA for Administration) The department and school districts are prohibited from using funds received from the American Recovery and Reinvestment Act of 2009 for state department or school district administrative salary increases, bonuses, retirement incentives, or severance packages. The department shall provide to the General Assembly a list of federal stimulus expenditures.

21.46. (DHHS: ARRA County Matching Funds Adjustment) From the county assessments for indigent medical care, the department is authorized to reduce and/or refund to the respective counties on a quarterly basis, such amounts as may be necessary to comply with Section 5001(g)(2) of the American Recovery and Reinvestment Act of 2009.

21.49. (DHHS: ARRA State Match Carry Forward) The Department of Health and Human Services is authorized to carry forward from the prior fiscal year into the current fiscal year any unobligated state match funds resulting from additional payments received from the increased Federal Medical Assistance Percentage provided by the American Recovery and Reinvestment Act of 2009.

23.17. (DMH: Carry Forward Unobligated Funds) The Department of Mental Health is authorized to carry forward from the prior fiscal year into the current fiscal year, unobligated funds resulting from additional payments received from the increased Federal Medical Assistance Percentage provided by the American Recovery and Reinvestment Act of 2009 to be used for inpatient hospital services.